

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Timothy Lute, :  
Petitioner(s), :  
vs. : Case Number: 1:19cv694  
Warden, Chillicothe Correctional Institution, : Judge Susan J. Dlott  
Respondent(s). :

ORDER

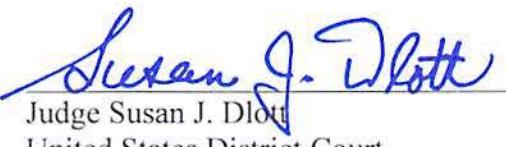
The Court has reviewed the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz filed on September 25, 2020 (Doc. 3), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired October 9, 2020. However, the Report and Recommendation was returned as “undeliverable” on October 9, 2020. There is not a forwarding address. Therefore, the Court ADOPTS said Report and Recommendation.

Accordingly, petitioner’s petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 3) is DENIED with prejudice.

A certificate of appealability will not issue with respect to the claims alleged in the petition, which have been addressed on the merits herein, since petitioner has not stated a “viable claim of the denial of a constitutional right,” nor are the issues presented “adequate to deserve encouragement to proceed further.” *See Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v Estelle*, 463 U.S. 880 893 & n.4 (1983)). *See also* 28 U.S.C. § 2253 ( c ); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith.” Therefore, the Court DENIES petitioner’s leave to appeal *in forma pauperis* upon a showing of financial necessity. *See Fed. App. P. 24(a); Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

IT IS SO ORDERED.



Judge Susan J. Dlott  
United States District Court